

United States Court of Appeals  
For the Eighth Circuit

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No. 14-1350

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Jorge Osbaldo Aguilera

*Petitioner - Appellant*

v.

United States of America

*Respondent - Appellee*

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Appeal from United States District Court  
for the Northern District of Iowa - Sioux City

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Submitted: September 25, 2014

Filed: October 3, 2014

[Unpublished]

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Before LOKEN, MELLOY, and GRUENDER, Circuit Judges.

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PER CURIAM.

Jorge Aguilera, who was sentenced to 120 months in prison after a jury found him guilty of drug offenses, *see United States v. Aguilera*, 625 F.3d 482, 484-85 (8th

Cir. 2010), appeals the district court's<sup>1</sup> order denying his 28 U.S.C. § 2255 motion after an evidentiary hearing. The district court granted Aguilera a certificate of appealability on his claim that his counsel was ineffective for having him provide a written proffer for safety-valve relief, rather than having him submit to an interview.

Upon de novo review of the district court's denial of this ineffective-assistance claim, and clear-error review of underlying factual findings, *see Covey v. United States*, 377 F.3d 903, 906 (8th Cir. 2004), we agree with the court that the decision of trial counsel not to subject Aguilera to a potentially prejudicial and likely futile proffer interview was a virtually unchallengeable matter of strategy, *see Forsyth v. Ault*, 537 F.3d 887, 892 (8th Cir. 2008), and Aguilera failed to show that he suffered resulting prejudice. We therefore affirm the judgment of the district court, and we grant counsel's motion to withdraw.

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<sup>1</sup>The Honorable Donald E. O'Brien, United States District Judge for the Northern District of Iowa.